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The State of the Controverted Election for the District of *PITTENWEEM*.

Between

Sir <i>John Anstruther</i> , } Baronet, } Sitting Member.	}	Major General } <i>Hamilton</i> , } Petitioner, <i>93</i>
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THE District of *Pittenweem* consists of Five Boroughs, viz. *Pittenweem*, *Anstruther Easter*, *Anstruther Wester*, *Kilreny* and *Crayle*; each of which sends a Commissioner to Vote in the Election of a Member of Parliament for the said District.

At the Meeting of the Commissioners for the Election of a Burgess to serve in Parliament, the Poll stood thus.

The Commissioner for the Town of <i>Crayle</i> , }	}	For the Petitioner.
The Commissioner for the Town of <i>Kilreny</i> , }	}	

The Commissioner for <i>Anstruther Easter</i> , }	}	For the Sitting
The Commissioner for <i>Anstruther Wester</i> , }	}	Member.

The Town of *Pittenweem*, which is the Fifth Borough, being divided in their Choice of a Commissioner, there were Two Commissions Signed by the Members of the Town Council; one to *William Watson*, whose Commission was Signed by Eight Persons, and the other to *William Bell*, Signed by Nine, This last Commission having an apparent Majority of Hands to it, would seem to entitle the said *William Bell* to be the Representative of the Borough of *Pittenweem*; if he himself had not been under a Legal Incapacity, and indirect Practices had not been used to procure Hands to his Commission.

Both these Commissioners appeared at the Place of Election, produced their respective Commissions, and claimed each of them to be admitted to Vote as Representing the Town of *Pittenweem*. Both Qualified themselves by taking the Oaths, were admitted to Vote, and are Marked on the Poll as Voting; the one, viz. Mr. *Bell*, for the Sitting Member, and the other, Mr. *Watson*, for the Petitioner.

The First Hardship and Injustice that the Petitioner complains of, is, that notwithstanding he had an equal Number of Votes with the Sitting Member, and that the said Equality is marked on the Books of the Poll; yet the Clerk of the Meeting returned the Sitting Member as having a Plurality of Voices, whereas he ought to have made a double Return, seeing the Votes were Equal.

Another Indirect Practice which the Petitioner lays to the Charge of the Sitting Member, or his Agents; is the Bribery of the whole Corporation of the Town of *Anstruther Wester*, whose Commissioner Voted for the Sitting Member, For it appears, That *My Lord Anstruther*, Father to the Sitting Member, did promise to the Town of *Anstruther Wester*, to pay a considerable Part of their Publick Debts, if they would chuse such a Commissioner as would Vote for his Son. And accordingly the Town Council before they proceeded to the Election of their Commissioner, made a Resolve, that he should be tied up to give his Vote for none else but the Sitting Member. And since the Election, the Sitting Member, or his Agents, have, in Discharge of the said Promise, paid off several Sums of Money owing by the said Town of *Anstruther Wester*.



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As that intire Corporation of *Anstruther Wester* was corrupted by Bribery; so the same indirect Means were used by the Sitting Member, or his Agents, to make an Interest in the Town Council of *Pittenweem*. And this being early Discovered by the *Lord Lyon*, who is a Native, and Trading Burges of the said Town of *Pittenweem*; he, upon the Twentieth Day of *October* 1710, went into the Council Chamber, before they proceeded to Elect their Commissioner, and there publickly Protested against the Votes of Seven of the Town Council, as being Influenced either by Threats, or Bribery, to Vote for Mr. *Bell* to be their Commissioner; and offered to prove it immediately before the Town Council. This Protestation was admitted by the Magistrates, and entred upon Record by the Clerk of the Council; and such Members of the Council as thought fit to deny, or make any answer to the Facts laid to their Charge, had the same likewise Recorded. So that this Protestation being thus received, and entred upon Record, is become an essential Part of the Proceedings in reference to the Election in Dispute.

When the Commissioners from the Five Boroughs met on the Twenty Seventh of *October* 1710, in order to proceed to the Election of their Representative in Parliament; Mr. *Beaton* of *Balfour*, who was Commissioner for the Town of *Kilreny*, Protested against the Admission of Mr. *Bell*, to Vote as Commissioner for *Pittenweem*; and that for the Reasons contained in the former Protestation entred against him, and his Electors. By which means, *My Lord Lyon's* Protestation became part of that entred by Mr. *Beaton*. For no other Protestation could be referred to, because no other had been entred. At the same time, Mr. *Watson*, the other Commissioner from *Pittenweem*, and at that time one of the Regent Magistrates of the Town, did in like manner, and for the same Reasons, repeated at large, Protest against the Admission of Mr. *Bell*.

Upon hearing the Merits of this Election, it comes now to be a main Question, who is to be reputed the Legal Commissioner for the Town of *Pittenweem*. Whether Mr. *Watson*, who Voted for the Petitioner; who is a Person unexceptionable in himself, and who has a Commission Signed by Eight of the Town Council, against whom no Objection has ever been made. Or, whether Mr. *Bell*, who Voted for the Sitting Member; who is by Law incapable of any Publick Trust, and whose Commission is Signed by Nine Persons, Seven of which were Protested against before they Voted, and can be proved, to have been gained by Bribes or Threats.

The Sitting Member foreseeing that there would be a full Proof of the Charge against Mr. *Bell*, and his Constituents, objected against the Reading of the Protestations that were entred against them; alledging, that none but such as were Members of the Town Council of *Pittenweem*, and capable both of Electing, and being Elected, could be present, or Protest against the Proceedings of the Council, and that a Protest entred by the *Lord Lyon*, or any other Person, was void; and consequently that no Witness could be examined to prove the Facts contained in it.

The Committee, upon this, came to the following Resolution, *viz.*

That the Protest taken by the *Lord Lyon*, should not be admitted in regard it did not appear that he had Right to Vote, protest, or be present at the Election.

With all due Submission and Deference to the Opinion of the Committee, the Petitioner humbly conceives, that he has very pregnant Reasons to offer to the Honourable House, why they should not agree to the Report of the Committee.

First, That the Protestation entred before the Town Council of *Pittenweem* by *My Lord Lyon*, was Legal and Warrantable; being made by One who was a Trading Burges of the Town, and who had an Interest in the Election, he himself standing Candidate for the District of *Pittenweem*, as well as for the Shire of *Fife*. It is the undoubted Right of all Burgeses, whether they be of the Town Council, or not, to complain of any Abuses committed by the Magistrates. And besides the common Right of Mankind in this particular, the Ancient Laws of *Scotland* are very Express and Circumstantial, in describing the Grounds upon which the Burgeses may accuse their Magistrates, and that of Taking of Bribes is particularly mentioned. And whoever is charged with that,

or any other Breach of the Law, is obliged to Purge himself by Oath before the Provost of the Borough. * So far is it from being an Intrusion on the Proceedings of the Town Council, for a Burges to go into the Council Chamber, and Protest before their Meeting, as the Lord *Lyon* did in the present Case; that the meanest Burges of the Town has a Right to be heard by the Town Council, when he has any Complaint to lay before them of the Corruption of any of the Magistrates. If no Persons were allowed to Protest against the Corruptions of a Magistracy, besides the Magistrates themselves, such Corruptions would seldom come to light, and the Offenders would be sure to go unpunished. For they would never be their own Accusers.

*Reg. Majest. Chamber.
lan Air. cap. iv Bo-
rough Laws. cap. xli.*

Secondly, The same Protestation, on the Score of Bribery and Corruption, against the Members of the Town Council of *Pittenweem* who Voted for Mr. *Bell* to be their Commissioner, was renewed, at the Meeting for the Election of the Burges to serve in Parliament, by Mr. *Beaton*, a Commissioner from One of the other Five Towns; who cannot be denied to have an Interest to Protest against any thing that was Illegal and Irregular in their Proceedings in that Election. In his Protestation he referred to a former Protestation that had been entred against them; which Reference can be applied to no other Protestation but that which *My Lord Lyon* gave in to the Town Council of *Pittenweem*, because no other Protestation was entred; so that this general Reference to a former Protestation, there having been but One, is the same thing as if he had expressly mentioned *My Lord Lyon's* Protestation.

Thirdly. This Protestation was repeated at the same time of Election of a Burges to serve in Parliament by Mr. *Watson*, who was actually one of the Magistrates of the Town, and was Mr. *Bell's* Competitor for Representing the Town of *Pittenweem* at the Election. He Protested there against Mr. *Bell*, and against the Persons who Signed his Commission; and Protested, not in general Terms, as Mr. *Beaton* had done before him, but repeated at large the very Reasons contained in *My Lord Lyon's* Protest, and produced my Lord *Lyon's* Protestation. So that here is a Protestation entred by Three Persons, every One of whom had a near and immediate Interest in the Election. And shall it be said, that neither of them had Interest to Protest; or, that they shall not be admitted to prove the Facts contained in their Protest? They are Represented in Parliament by the Member who serves for the District of *Pittenweem*; and shall the Sitting Member, who takes upon him to Represent them, tell them, that they have no Right or Interest to see that they be fairly Represented?

Fourthly, Supposing no Protestation at all had been entred at the time of the Election, against the Indirect Practices used by the Sitting Member to get himself Elected; yet the Petitioner would always be in time to prove Bribery and Corruption against him, whilst the Merits of the Election remain undecided. In the County Elections in *Scotland*, the Law requires, that if any Objection is to be offered against any of the Electors, it should be made at the time of the Election, that the Electors knowing the Objections that are made to their Votes, may be prepared to justify in Parliament their Right and Title to Vote; because they are Subject to a Penalty, if they Vote without a Right. But in the Elections of Boroughs, no such Protestation at the time of Election is by Law required. And even in the County Elections, the Protestation that is required to be made at the time of Election, is only when the Right and Title of any One is called in Question, as not having a sufficient Estate of Inheritance to entitle him to a Vote. But Objections of Bribery and Corruption may be offered at any time, although no mention have been made thereof at the time of Election. And indeed such indirect Practices are seldom or never found out till the Election is over.

Seeing therefore the Petitioner is undoubtedly a Person capable in all respects of being Elected, and he having a Majority of Legal Votes, it would be very hard to debar him of the Means of Validating his own Election, by Disqualifying the Votes of the Sitting Member, especially when he offers to prove against him Bribery and Corruption. It is therefore humbly hoped, that the Honourable House of Commons will Disagree to the Report of the Committee, and admit

mit the Protestations to be read, and the Petitioner to produce his Witnesses, for proving the particular Facts of Bribery and Corruption therein mentioned; especially seeing by the Laws made since the Union of the Two Kingdoms, in reference to Elections of Members of Parliament, the Incapacities and Disabilities which vacate Elections in *England*, are declared to have the same Effect in the Elections of *Scotland*. And in this Case, they are offered to be proved not only by Witnesses, according to the Law of *England*, but likewise by Protestations made at the time of Election, according to the Custom of *Scotland*.

THE

STATE

OF THE

Controverted Election

FOR THE

District of *Pittenweem*.

